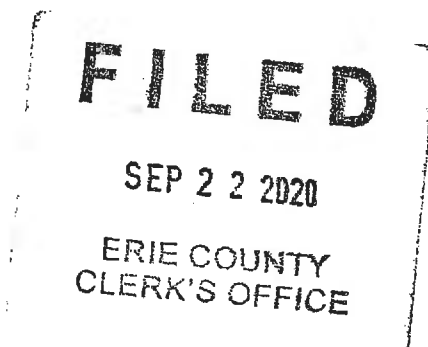


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SECOND AMENDED SUPPLEMENTAL DECLARATION  
OF  
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,  
CHARGES AND LIENS - CHARLESGATE VILLAGE  
(CHARLESGATE VILLAGE DECLARATION)

DATE: September 14, 2020



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**SECOND AMENDED SUPPLEMENTAL DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND  
LIENS - CHARLESGATE VILLAGE (CHARLESGATE VILLAGE DECLARATION)  
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**SECOND AMENDED SUPPLEMENTAL DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS - CHARLESGATE VILLAGE ASSOCIATION (CHARLESGATE VILLAGE)**

THIS SECOND AMENDED SUPPLEMENTAL DECLARATION, made this \_\_\_\_ day of \_\_\_\_\_, by the undersigned Unit Owners representing more than 67% of the total number of Units owned by Unit owners in good standing, of the comprising the Charlesgate Village Association, East Amherst, New York 14051, being referred to hereinafter as "the Undersigned Unit Owners".

**WITNESSETH**

WHEREAS, the Undersigned Unit Owners are the owners of dwelling units located on subdivision lots located within the real property described in Article II of this Second Amendment Supplemental Declaration, which real property is known as "Charlesgate Village" and which real property includes open spaces and other common facilities for the benefit of all Unit Owners within said Charlesgate Village Community; and

WHEREAS, a Declaration of Protective Covenants, Conditions and Restrictions (the "Ransom Oaks Declaration") was recorded in the Erie County Clerk's Office in Liber 7908 of Deeds at page 155; and

WHEREAS, a Supplemental (i.e. supplemental to the Ransom Oaks Declaration) Declaration of Protective Covenants, Conditions and Restrictions - Charlesgate Village was recorded in the Erie County Clerk's Office in Liber 8018 of Deeds at page 163 extending the provisions of the Ransom Oaks Declaration to the real property comprising Charlesgate Village and subjecting the Charlesgate Village property to additional covenants, conditions and restrictions; and

WHEREAS, the Unit Owners wish to amend and rescind such Supplemental Declaration of Protective, Covenants, Conditions and Restrictions - Charlesgate Village, recorded in Liber 8018 of Deeds at page 163 on February 28, 1973; and

WHEREAS, pursuant to the aforementioned Supplemental Declaration, Section 10.07 the Supplemental Declaration may be amended or rescinded by an instrument signed by the Owners of 67% or more of the total number of units of owners in good standing, which are subject to the Supplemental Declaration.

WHEREAS, the Unit Owners in good standing represent more than 67% of the votes of all Units; and

WHEREAS, the Unit Owners desire to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other

common facilities; and, to this end, desire to subject the real property described in Article II to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, the Unit Owners desire that such real property which has been subdivided into lots on which residential dwelling units have been constructed, which lots and units are individually owned, and the Unit Owners desire that the open spaces and other common facilities shall remain available for the benefit of all members of the community; and

WHEREAS, the Unit Owners have deemed it desirable, for the efficient preservation of the values and amenities in said community to maintain an agency to which shall be delegated and assigned the powers of maintaining and administering the community property and facilities, maintaining the exteriors of the dwelling units, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the CHARLESGATE VILLAGE ASSOCIATION, INC., comprised of the Owners of all Units on the Charlesgate Village property has been incorporated under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions.

NOW THEREFORE, the Unit Owners, for themselves, their successors and assigns, declare that the real property described in Section 2.01 hereof is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth.

## ARTICLE I

### DEFINITIONS

Section 1.01 Definitions. The following words, phrases or terms when used in this Declaration or in any instrument supplemental to this Declaration shall, unless the context otherwise prohibits, have the following meanings:

a. "Association" shall mean and refer to the CHARLESGATE VILLAGE ASSOCIATION, INC.

b. "Association Property" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by the Association.

c. "Good Standing" shall be defined as not in arrears in any sum of money greater than 200% of the current monthly Maintenance Assessment.



d. "Lot" shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Town of Amherst or (ii) shown as a separate lot upon any recorded or filed subdivision map.

e. "Lot Owner" shall mean the owner of a "Lot".

f. "Owner" shall mean and refer to the holder of record title, whether one or more persons or entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot.

g. "Property" shall mean and refer to all properties as are subject to this Second Amended Supplemental Declaration.

h. "Second Amended Supplemental Declaration" shall mean and refer to this document as it may from time to time be supplemented, extended, or amended in the manner provided for herein.

i. "Unit Owners" shall refer to the Owners of Units located on the property identified on Schedule A attached hereto.

j. "Unit" shall mean and refer to a residential dwelling unit.

k. "Unit Owner" shall mean owner of a "Unit".

l. "Meetings" shall include all meetings of the Board, Committees, Membership Meetings and Special meetings. These may be conducted via Electronic means unless prohibited by law.

## ARTICLE II

### PROPERTY SUBJECT TO THIS SECOND AMENDED SUPPLEMENTAL DECLARATION

Section 2.01 Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Second Amended Supplemental Declaration, is located in the Town of Amherst, County of Erie and State of New York, all of which property shall be hereinafter referred to as the "Property". The real property subject to this Second Amended Supplemental Declaration is described in Schedule A attached hereto.

Section 2.02 Mergers. Upon a merger or consolidation of the Charlesgate Village Association, Inc. with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights

and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Charlesgate Village Association, Inc. as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Supplemental Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Second Amended Supplemental Declaration within the Property except as hereinafter provided.

### ARTICLE III

#### THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01 Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Charlesgate Village Association, Inc. (the "Association") was formed, to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Second Amended Supplemental Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Second Amended Supplemental Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Second Amended Supplemental Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the New York State Not-for-Profit Corporation Law as the same may be amended from time to time.

Section 3.02 Membership. The Association shall have as members Unit Owners. All Unit Owners shall, upon becoming such, be deemed automatically to have become members and there shall be no other qualification for membership. Membership shall be appurtenant to and shall not be separated from the ownership of any of the interests described in the definitions of the words "Unit Owner" as found in Article I of this Second Amended Supplemental Declaration.

Section 3.03 Voting: Mortgagee's Control of Votes. Each Unit Owner, in good standing, shall be entitled to one (1) vote. Notwithstanding anything to the contrary which may be contained in this Second Amended Supplemental Declaration, if an institutional first mortgage lender whose name appears on the records of the Association (i) holds a mortgage on a Unit which prohibits the mortgagor from voting contrary to the interest of the mortgagee, and (ii) notifies the Association prior to the date or initial date of canvass on the vote to be taken of its position on the matter being voted upon, a vote of the Unit Owner contrary to the position of such mortgage lender shall not be counted in such canvass.

**Section 3.04 Units Owned or Held by More Than One Person or by a Corporation.** When any Unit is owned or held by more than one person as tenants by the entirety, in joint or common ownership or interest, such Owners shall collectively be entitled to only one (1) vote and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed.

In the case of a corporate Unit Owner, votes may be cast by an appropriate officer of such corporation.

**Section 3.05 Holder of Security Interest Not a Member.** Any person or entity which holds an interest in a Unit merely as security for the performance of an obligation shall not be a member.

**Section 3.06 Assigning Right to Vote.** Any Unit Owner, in good standing, shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

**Section 3.07 Meeting and Voting Regulations.** The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration and the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of the State of New York, as it may deem advisable for any meeting of its Owner members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Unit Owners for voting purposes, the establishment of representative voting procedures, the establishment of extended canvass periods for voting and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

**Section 3.08 Selection and Powers and Duties of Directors.** The nomination and election and powers and duties of the Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association.

**Section 3.09 Indemnification of Officers and Directors.** Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, judgments, decrees, fees, penalties or amounts paid in settlement, reasonably incurred by or imposed upon such director or officer in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, whether or not such person is a director or officer at the time such expenses are incurred, except that no such indemnification shall be made if a judgment or other final adjudication adverse to such director or officer establishes that (i) the acts of the director or officer were committed in bad faith or were the result of

active and deliberate dishonesty and were material to the cause of action so adjudicated, or (ii) such director or officer (or a member of such director's or officer's family) personally gained a financial profit or other advantage to which such beneficiary was not legally entitled; provided, that in the event of a settlement or other nonadjudicated disposition, the indemnification herein shall apply only when the Board of Directors of the Association approves such settlement as being in the best interests of the Association. Funds to cover the above expenses, including fees of counsel, may be advanced to the Association, prior to the final disposition of the matter, upon receipt of an undertaking by or on behalf of the recipient to repay such amounts if it shall ultimately be determined that (i) the recipient is not entitled to indemnification or (ii) where indemnification is granted, the expenses so advanced exceed the amount to which such officer or director is entitled.

The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each officer may otherwise be entitled under any statute, rule, regulation, certification of incorporation, by-law, resolution of directors or members, insurance policy, contract or otherwise.

#### ARTICLE IV

##### PROPERTY RIGHTS AND EASEMENTS

###### Section 4.01 Right and Easement of Enjoyment in Association Property.

Every Lot Owner (and such Lot Owner's guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property subject, however, to the rights of the Association as set forth in Sections 4.02 and 4.03 herein. Such easements shall be appurtenant to and shall pass with the interests of a Unit Owner.

Every Unit Owner shall also have an easement for ingress and egress by vehicle or on foot as described in Section 4.04 hereof and the common utility and conduit easements described in Section 4.03 hereof. These easements will be subject to the rights of the Association as set forth in Section 4.02 herein, provided, however, that any conveyance or encumbrance referred to in Section 4.02(c) below shall be subject to said easement of each Unit Owner for ingress and egress.

Section 4.02 Rights of Association. With respect to the Association Property owned, and in accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the right:

a. to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Unit Owners;

b. to grant easements or rights of way, with or without consideration, to any public or private utility corporation, cable television company, governmental agency, or political subdivision.

c. to dedicate, sell, transfer, abandon, partition, or encumber (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit of the Unit Owners) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of not less than 67% of all Unit Owners who shall vote by written ballot which shall be sent to all Unit Owners and lending institution first mortgagees of Units, whose names appear on the books or records of the Association, not less than 10 days nor more than 50 days in advance of the date or initial date of the canvass thereof. No such conveyance shall be made if lending institutions, which together are first mortgagees on 51% or more of the Units, advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance, that they are opposed to such conveyance, which opposition must not be unreasonable;

d. to enter into agreements, reciprocal or otherwise, with other homeowners' associations, condominiums and cooperatives for the use or sharing of facilities. Such agreements shall require the consent of the Unit Owners of 67% of the total votes of all Units voting upon written ballot which shall be sent to every Unit Owner not less than 10 days nor more than 60 days in advance of the date or initial date of the canvass thereof.

e. to enter into agreements with other homeowners' associations, condominiums and cooperatives for common maintenance, management and other services, materials, and supplies.

Section 4.03 Association's Utility and Conduit Easements. Except as specifically otherwise provided in Section 6.01, each Lot shall be subject to an easement in favor of the Owners of other Lots for the maintenance and use of any pipes, wires, coaxial cables, conduits, drainage areas and public utility lines servicing, but not located on, the Lot of such other Owner. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to each Unit and Lot for maintenance, repair or replacement of any pipes, wires, coaxial cables, conduits, drainage areas or public utility lines located on any Lot or within any Unit and servicing two or more Lots. If a repair is occasioned by a negligent or willful act or omission of a specific Unit Owner or Unit Owners, it shall rather be considered a special expense allocable to the Unit Owner or Unit Owners responsible and such cost shall be added to the Maintenance Assessment of such Unit Owner or Unit Owners and, as part of that Assessment, shall constitute a lien on the Lot, or Lots of such Owner or Owners to secure the payment thereof. (See Article VI of this Declaration.)

The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Unit Owner(s) directly involved, if any, have an easement and right of access over the exterior walls of various Units for the placement, maintenance, repair and replacement of utility banks and telephone pedestals.

**Section 4.04 Common Access Easement.** All Lot Owners and their guests, mortgagees, licensees and invitees shall have an easement by vehicle or foot for ingress and egress in common with one another over all walkways, driveways and roadways located on the Association Property and the Association shall have an easement of access to each Lot or Unit for the maintenance, repair and replacement of walkways, driveways and roadways or any property or facilities, the maintenance of which is the responsibility of the Association.

**Section 4.05 Maintenance of Association Facilities and Improvements.** In order to preserve and enhance the property values and amenities of the Association Property, the Association shall at all times maintain the facilities in good repair and condition and shall operate such facilities in accordance with high standards. Any material increases or decrease in the maintenance responsibilities of the Association shall require the consent of the Unit Owners of not less than two-thirds (2/3) of all Units.

**Section 4.06 Right of Association to Contract Duties and Functions.** The Association may contract with any person, corporation, firm, trust company, bank, or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management and maintenance agreements with other associations, condominiums, and cooperatives.

**Section 4.07 Distribution of Condemnation Awards.** In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article VIII of this Second Amended Supplemental Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding to those institutional first mortgagees of Units whose names appear on the books or records of the Association.

In the event of any dispute with respect to the allocation of the award, the matter shall be submitted to arbitration in accordance with the arbitration statutes of the State of New York.

**Section 4.08 Association's Easement for Maintenance and Repairs.** The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to any portion of the Property, including the Lots and Units, to permit the maintenance, repair or replacement of any property or facilities, the maintenance of which is the responsibility of the Association, except that in any emergency, the Association shall have the right, without notice, to enter upon any portion of the Property, including the Lots and Units, to make necessary repairs or to prevent damage to any portion of the Association Property or any other property for which it is responsible to maintain, repair or replace as provided for in this Second Amended Supplemental Declaration. The repair of any damage caused in gaining access in an emergency shall be at the expense of the Association.

**Section 4.09 Hearing Procedures.** Where the Board of Directors is required in accordance with the provisions of this Second Amended Supplemental Declaration to hold a public hearing prior to taking certain action (hereinafter referred to as a "Hearing"), the procedures set forth in this Section 4.09 (the "Hearing Procedures") shall be followed. The Hearing on the proposed action (the "Proposal") shall be held not less than 20 or more than 60 days after the Board of Directors has initiated the Proposal. Notices of the Hearing (the "Notice") shall be mailed, or e-mailed, to all Unit Owners in accordance with Section 11.02 of this Second Amended Supplemental Declaration. The Notice shall describe in detail the Proposal, the Hearing Procedures set forth herein as well as any other procedures applicable thereto as may be imposed by other sections of this Second Amended Supplemental Declaration, and shall specify the date, time and place of the Hearing. The Hearing will be held on the Property or in a place reasonably accessible to the Property. All Unit Owners and other interested persons shall be entitled, subject only to reasonable rules and regulations established by the Board of Directors for the conduct of such Hearing, to attend the Hearing, to express their views on the Proposal, to ask questions, or to submit written comments with regard to the Proposal. If, in connection with a proposal, a Hearing is required pursuant to more than one section of the Second Amended Supplemental Declaration, the Board of Directors may elect to hold one combined Hearing on such Proposal, provided that all restrictions, limitations or additional procedures, if any, imposed by each of the applicable sections are followed.

**Section 4.10 Acquisition Conveyance Improvement and Changes in Use of Association Facilities.** Subject to the limitations set forth in this Section, the Board of Directors of the Association, on such terms and conditions as it deems appropriate, may authorize:

1. the acquisition, through purchase, gift, lease or any combination thereof, of land or improvements or any combination thereof, as Association Property;

2. the transfer, conveyance, donation, lease, or other disposition of any Association Property;

3. the construction of, or the making of additions, modifications, or alterations to, or the demolition of, improvements to Association Property;

4. the material change in the use of any Association Property (including, without limitation, construction of improvements so as to convert passive recreational or open space to active recreational use).

Upon the affirmative vote of the Board of Directors proposing any of the above, the Board of Directors shall hold a Hearing on the Proposal in accordance with the Hearing Procedures set forth in Section 4.09 hereof.

Not less than 15 nor more than 45 days after the Hearing, the Board of Directors shall vote on the Proposal; with such modifications thereto as it deems appropriate after due consideration of the written and oral comments received at the Hearing. An affirmative vote of not less than three-fourths (3/4) of the entire Board of Directors shall be required for approval; provided, however, that any material change in use shall not be in violation of the zoning laws or any other laws, ordinances, rules or regulations of the Town of Amherst or any other governmental authority.

If a proposed acquisition of land or improvements or the construction, addition, modification, alteration to, or the demolition of Association Property, will result in the imposition of a Special Assessment as provided in Section 5.04 of this Second Amended Supplemental Declaration, the Board of Directors shall hold a Hearing thereon in accordance with the Hearing Procedures set forth in Section 4.09 hereof, and the provisions of Section 5.04, prior to finally authorizing such action.

Notwithstanding the provisions of this Section, the decision of the Board with respect to any proposal may not be contrary to the position of Owners of 51 % or more of the Units, expressed in a written petition or petitions signed by such Owners and delivered to the Board prior to its scheduled vote in the proposal.

**Section 4.11 Damage Resulting from Use of Easement.** Any damage to any Lot or other portion of the Property or to any improvements thereof as a result of any act or work performed pursuant to the authority granted in this Article IV, or as a result of the use of any easement granted or reserved herein, shall be promptly repaired, replaced or corrected as necessary by the person or entity performing the act or work and/or by the grantee or holder of the easement being exercised, at the cost and expense of such person



or entity (except as provided in Section 4.02 above), so that any such damage will be restored or replaced to the condition in which it existed immediately prior to the damage.

Section 4.12 Parking. The Association may designate parking spaces for the use of each Unit Owner and such Unit Owner's guests.

## ARTICLE V

### ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

Section 5.01 Imposition. Personal Obligation. Lien. Each Lot Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

a. annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments");

b. special assessments for capital improvements, repairs to Association Property, and unbudgeted or extraordinary expenses of the Association ("Special Assessments"); together hereinafter being referred to as "Assessments"; and

The Assessments shall be fixed, established, and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such late charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due.

Section 5.02 Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Unit Owners, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty, liability and other insurance obtained pursuant to Article VIII of this Supplemental Declaration and all maintenance required pursuant to Article VI, Section 6.01 of this Declaration.

As provided in Section 4.05 of this Second Amended Supplemental Declaration, any material increases or decrease in the maintenance responsibilities of the Association shall require the consent of the Owners of not less than two-thirds (2/3) of all Units. The amount of any reserves shall be not less than the reasonable requirements of existing or proposed lenders, holders, and insurers of first mortgages on the Units.

**Section 5.03 Basis for Maintenance Assessment.** The annual Maintenance Assessment chargeable to each Unit assessed shall be the same for all Units, so that the annual Maintenance Assessment for each Unit shall be determined each year by dividing the number of Units liable for the payment of Maintenance Assessments pursuant to Section 5.01 above, into the total amount which the Board of Directors shall deem to be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained).

**Section 5.04 Special Assessments.** In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying, in whole or in part, the cost of (i) any construction, reconstruction or replacement of, or repair of the Association Property or to any improvements or landscaping on the Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related thereto; (ii) any unbudgeted, unanticipated or extraordinary expense, claim against or liability of the Association, and (iii) any amount plus interest and penalty owed by a Lot Owner pursuant to Section 6.02 below which have not been timely paid. Before levying such a Special Assessment, the Board of Directors shall hold a Hearing on said proposed Special Assessment in accordance with the Hearing Procedure set forth in Section 4.09 of this Second Amended Supplemental Declaration. Not less than 45 days after such Hearing, the Board of Directors shall (i) for any Special Assessment for the construction (other than the reconstruction or replacement or repair) obtain the consent of two-thirds (2/3) of the total votes of Unit Owners, who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Unit Owners at least 30 days in advance, setting forth the purpose of the meeting, and (ii) for any Special Assessment, obtain the approval of not less than three-fourths (3/4) of the entire Board of Directors. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least 30 days prior to the first such due date.

**Section 5.05 Notice of Assessments.** The Assessments provided for herein shall be on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Unit at least 30 days in advance of each annual Assessment period. The Assessments shall be due and payable monthly unless the Board of Directors establishes other installments for payment, which installments may or may not be equal. Separate due dates may be established by the Board for partial annual Assessments as long as said Assessments are established at least 30 days before due. Written notice of the annual Assessments shall be sent to every Unit Owner subject thereto. Should the Board of Directors determine at any time that the Assessments are insufficient to fully fund the then current year's expenditures, the Board may assess additional amounts on a pro rata basis to all Unit Owners.

**Section 5.06 Assessments for Specific Lots.** The Unit Owner of each Lot subject to this Declaration shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any.

**Section 5.07 Change in Basis of Assessments.** The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of not less than 67 % of the total votes of all Unit Owners, voting in person or by proxy, written notice of which change shall be sent to all Unit Owners and lending institution first mortgagees of Units whose names appear on the records of the Association at least 40 days in advance of the date or initial date set for voting thereon, except that: no such change shall be made if lending institutions, which together are first mortgagees on 51% or more of the Units, advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Erie as an amendment to this Second Amended Supplemental Declaration.

**Section 5.08 Non-Payment of Assessment.** If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.05 hereof, then such Assessment payment shall be deemed delinquent. Any delinquent Assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the Lot which shall bind such Lot in the hands of the then Unit Owner and such Unit Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Unit Owner to pay such Assessment shall remain such Unit Owner's personal obligation and shall not pass to such Unit Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within 10 days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed 10 % of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied.

If the Assessment or any installment thereof, is not paid within 30 days after the due date, (i) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law, (ii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Lot Owner and (iii) the Association may bring legal action against the Unit Owner personally obligated to pay the same or foreclose the lien against the Lot of such Unit Owner, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Unit Owner shall be applied in the following order: attorneys' fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall, under no circumstances, entitle any Unit Owner to withhold or fail to pay the Assessments due to the Association for the Unit or Units owned by such Unit Owner.

**Section 5.09 Notice of Default.** The Board of Directors, when giving notice to a Unit Owner of a default in paying Assessments, may, at its option, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Lot whose name and address appears on the Board's records. The mortgagee shall have the right to cure the Unit Owner's default with respect to the payment of said Assessments.

**Section 5.10 Right to Maintain Surplus.** The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

**Section 5.11 Assessment Certificates.** Upon written demand of the Unit Owner or lessee of a Unit (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Unit), the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Unit as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e. g. for the cost of extinguishing a violation of this Supplemental Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificates, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee or title insurer of, or lender, on the Lot on which such certificate has been furnished.

**Section 5.12 Subordination of Assessment Lien to Mortgages.** The lien of the Assessments provided for herein shall be subordinate to the lien of any bona fide first mortgage of record now or hereafter placed upon any Lot subject to such Assessments;

provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the Owner of such Unit from liability for any Assessments thereafter becoming due, nor relieve such Lot from the lien of any such subsequent Assessment.

Section 5.13 Adjustment of Assessments on Transfer. Unless otherwise agreed upon between the parties to the transfer, upon the transfer of a Unit, Maintenance Assessments and any Special Assessments which (i) may be payable in installments or (ii) are specifically applicable to a defined period of time which has not expired, shall be adjusted between the grantor and grantee, with the grantor being entitled to reimbursement from the grantee for the portion of any payment made by the grantor which is applicable to the remainder of the period in which the transfer occurred or to a subsequent period, and the grantee being entitled to a credit from the grantor for the portion of any unpaid payment assumed by the grantee which is applicable to the expired portion of the period in which the transfer occurred or to any prior period. Unless otherwise provided by the Board of Directors of the Association in its adoption, (i) a Special Assessment payable in installments shall be adjusted as if the installment payments apply to a period following the date due, the length of which shall be equal to the interim period between installment due dates and (ii) a Special Assessment payable in a single installment shall be the sole responsibility of the Owner of the Unit on the date which such Assessment is initially due.

Section 5.14 Right to Borrow and Mortgage. In order to fulfill the purposes, set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the decision of the Board of Directors acting in its absolute discretion.

Section 5.15 Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

- a. to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessments hereunder;
- b. to mortgage Association Property;
- c. to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:

1. assess the Maintenance Assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.03 hereunder, to assess the same at a particular rate or rates;
2. establish sinking funds and/or other security deposits;
3. apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection;
4. establish such collection, payment and lien enforcement procedures as may be required by the note holders;
5. provide for the custody and safeguarding of all funds received by it.

## ARTICLE VI

### MAINTENANCE

Section 6.01 Maintenance and Repair by the Association. Except as specifically otherwise provided in this Section 6.01, all maintenance and repair of and replacements to the following shall be the responsibility of, and at the cost and expense of the Association:

- a. improvements on Association Property, including the maintenance, repair and replacement of all roadways, parking areas, walkways, and front steps, which are totally located on Association Property;
- b. snow removal from all walkways, driveways, parking areas and roadways on the Property (whether or not such areas are on Association Property);
- c. the maintenance of all landscaped areas including all shrubbery and other plantings on the Association Property, but not for flowerbeds or other plantings located on any Lot.

Units. With respect to the Units, the Association shall repair and replace the exterior siding, gutters and roofs, and paint the exterior of garage doors, but shall not (i) repair or replace window panes or (ii) maintain, repair or replace doors or (iii) maintain, repair or replace garage doors, garage door hardware, tracks or openers.

The Association will replace outside light globes. The association will also replace bulbs on exterior garage lights only.

**Under ground.** Maintenance, repair and replacement of pipes, wires, conduits and public utility lines servicing a Unit and for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property) shall be the responsibility of, and an expense of, the Unit Owner so serviced by said pipe, wires, conduit or public utility line. Specifically:

a. storm sewers and lateral lines connecting the storm sewer will be maintained by the Association.

b. pressurized water (fresh water) lines that extend from the Unit to the connection at the main water line will be maintained by the Unit Owner.

c. sanitary sewer lines, which extend from a Unit to the main sewer, will be the responsibility of the Unit Owner, from the Unit to their lot line. The Association will be responsible from the lot line to the main sewer. The Unit Owner and Association will share responsibility if both areas of the sewer line are involved.

**Other Lot Improvements.** With respect to the other improvements on the Lots, the Association shall repair and replace all walkways and privacy fences, but not existing decks, or privacy fences erected by Unit Owners, and will stain/paint all privacy fences.

The Association may increase or decrease its maintenance responsibilities, provided such increase or decrease is approved by two-thirds (2/3) of all Unit Owners.

Any responsibility for maintenance, repair or replacement with respect to the Lots and Units, which is not the responsibility of the Association is the responsibility and shall, be made at the cost and expense of the respective Owner(s) of such Lots or Units.

Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

The Association shall have an easement and right of access for maintenance and repairs as set forth in Section 4.08 of this Second Amended Supplemental Declaration.

**Section 6.02 Repairs and Maintenance Which Are Not the Responsibility of the Association.** Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act or omission of a Unit Owner (including: (1) any family member, tenant, guest or invitee of such Owner, (2) any family member, guest or invitee of the tenant of such Owner, and (3) any guest or invitee of (i) any member of such Owner's family, or (ii) any family member of the tenant of such Owner) shall be made at the cost and expense of such Lot Owner. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit or Lot and such cost

shall be added to that Unit Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot to secure the payment thereof.

Section 6.03 Quality and Frequency of Maintenance and Repairs. All maintenance, repair, and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement of Property which it is obligated to maintain, repair or replace pursuant to Section 6.01, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of such Property.

## ARTICLE VII

### PARTY WALLS AND ENCROACHMENTS

Section 7.01 Party Walls. A wall shall be considered a party wall where all of the following conditions are met:

- a. the wall is built as part of the original construction of the Units; and
- b. the wall is an interior wall of a Building; and
- c. the wall serves as a common wall of two adjoining Units, whether or not the wall is on the dividing line between such Units.

Section 7.02 Maintenance of Party Walls. Each Unit Owner whose Unit contains a party wall shall have an easement to enter upon the Lot and within the Unit with which the party wall is shared to effect necessary repairs or maintenance of such party wall. Each Owner shall be responsible for the ordinary maintenance and repair of such Owner's respective side of a party wall. If it shall become necessary to make substantial repairs to or rebuild a party wall, the cost of such repairing or rebuilding shall be borne equally by the Owners of the two (2) Units that share such wall.

In any event where it is necessary for a Unit Owner (or said Owner's authorized employees, contractors or agents) to enter upon a Lot or within a Unit owned by another for purposes of maintaining a party wall, such right shall be exercised upon reasonable notice to the adjoining Owner, shall be limited to reasonable times, and shall be exercised so as not to unreasonably impair the right of the adjacent Owner to the use and quiet enhancement of said adjacent Unit.

Section 7.03 Exposure of Wall. A Unit Owner who, by negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against, and the necessary repair caused by, such elements.



Section 7.04 Materials Used. If and when any party wall is repaired or rebuilt, it shall stand upon the same place and be of the same or similar materials as the original wall.

Section 7.05 Destruction of Part Wall. In the event of destruction of a party wall by fire or other casualty, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, the Owner of any Unit, which used the wall, may restore it. The Owner who undertakes such restoration shall be entitled to a contribution (equaling one-half (1/2) the cost of such restoration) from the Owner of the other Unit, which shares such wall. Such right to contribution shall not be construed, however, to limit in any degree, the right of an Owner to seek a greater contribution if so entitled under the law of the State of New York regarding liability for negligent or willful acts or omissions.

Section 7.06 Encroachments or Projections. If any Unit encroaches or projects up to two (2) feet upon or over any other Unit or Lot or upon or over any portion of the Association Property or if any deck or patio servicing a Unit encroaches or projects upon or over any portion of the Association Property as a result of: (i) original construction, (ii) settling or shifting, or (iii) replacement, as a result of fire, condemnation, eminent domain proceedings of similar import and effect; such encroachment or projection shall be permitted and a valid easement for such encroachment or projection and the maintenance thereof shall exist so long as such improvements shall stand. If such encroachment or projection occurs as a result of replacement, the encroachment or projection must be inadvertent in order for a valid easement to exist.

Section 7.07 Part Wall Rights Run with the Land. The rights of support, quiet enjoyment, entry to repair or restore and contribution for the cost of the same which are described in this Article shall run with the land and shall bind the heirs, successors and assigns of each Lot Owner.

## ARTICLE VIII

### INSURANCE AND RECONSTRUCTION

Section 8.01 Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain, (and review at least once each year) and with such deductible amounts as the Board of Directors shall deem appropriate: (1) fire and casualty insurance, (2) liability insurance for occurrences on the Association Property, (3) directors' and officers' liability insurance covering wrongful acts of officers and directors of the Association, (4) fidelity bond covering those who handle Association funds, and (5) workers' compensation insurance covering Association employees and those who perform work for the Association as follows:

a. **Fire and Casualty.** The policy shall cover the interests of the Association, the Board of Directors and all Unit Owners and mortgagees as their interests may appear. Coverage shall be for the full replacement value, (without deduction for depreciation) of all improvements on the Property under the "single entity" concept, i.e. covering the Units including the wall to wall carpeting, lighting fixtures, bathroom fixtures, kitchen appliances, wall coverings, and all machinery servicing the Units and common facilities, and, if available, improvements and betterments (including upgrading of appliances, kitchen cabinets, carpeting, and lighting fixtures, etc.) made by present or prior Lot or Unit Owners or occupants **excluding** (i) the land and foundations, (ii) the personal property of Lot Owners and occupants.

The policy shall have the following provisions, endorsement and coverages: (i) extended coverage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage, (ii) inflation guard or blanket property limits, (iii) coverage for loss of Maintenance Assessments from Lot Owners forced to vacate because of fire or other insured against casualty, (iv) waiver of any right to claim by way of subrogation against individual Lot Owners and the members of their households and families, the Association, the officers and directors of the Association, and the managing agent, if any, for the Association, (v) that the insurance purchased by the Board of Directors shall be deemed primary coverage and any policies obtained by individual Lot Owners or mortgagees shall be as per the requirements as outlined in Sections entitled "Deductible" and "Insurance Carried by Unit Owners", following, (vi) a provision that the policy cannot be cancelled, invalidated or suspended because of the act or neglect of someone over whom the insured has no control, (vii) a provision that the policy may not be cancelled (including cancellation for non-payment of premium), substantially modified, invalidated or suspended, without at least 30 days prior written notice to all of the insured (10 day notice for non-payment of premium), including all mortgagees of Lots reported to the insurance carrier or its agent, and (viii) a provision that adjustment of loss shall be made by the Board of Directors.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain a valuation from an insurance company or from such other source as the Board of Directors shall determine to be acceptable as to the full replacement value (without deduction for depreciation) of the improvements on the Property (exclusive of land and foundations) for the purpose of determining the amount of fire and casualty insurance to be effected pursuant to this Section.

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to a mortgagee as its interest shall appear; subject, however, to the loss payment provisions in favor of the Board of Directors. The obligation to restore or reconstruct after damage due to fire or other insured peril supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

The interest of the Association, and each Unit Owner shall be acknowledged on the policy, as their interests may appear. Each Unit Owner and such Owner's known mortgagee shall receive, at the time of purchase and at the time a new policy is obtained, or an existing policy renewed, a certificate evidencing proof of insurance coverage.

Certificates or endorsements to the policy, together with proof of payment of premiums, shall be furnished by the Board of Directors to all mortgagees of Lots requesting the same for a reasonable charge.

b. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Unit Owners, but not the liability of Unit Owners arising from occurrences within such Owner's Unit or on such Owner's Lot. The policy shall include the following endorsements: (i) commercial general liability including bodily injury, property damage and personal injury (libel, slander, false arrest and invasion of privacy), (ii) medical payments, (iii) cross-liability under which the rights of a named insured under the policy shall not be prejudiced with respect to such insured's action against another named insured, (iv) "severability of interest" precluding the insurer from denying coverage to a Unit Owner because of negligent acts of the Association or any other Unit Owner, (v) contractual liability, (vi) host liquor liability coverage with respect to events sponsored by the Association.

Coverage may not be cancelled or suspended (including cancellation for nonpayment of premium) or substantially modified without at least 30 days' prior written notice to the insured (10 days for non-payment of premium), including all known mortgagees of Units or Lots as shown on the records of the Association. The Board of Directors shall review such coverage at least once each year, with the assistance of a licensed Insurance Broker.

This public liability insurance shall be in a combined single limit of at least \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence.

c. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts (wrongful performance or failure to perform) of a director or officer of the Association, and the Association's managing agent, if any. The policy shall be on a "claims made" basis and shall include all prior officers and members of the Board of Directors, and any deductible provision shall apply only to each claim. The policy shall provide the "participation" by the Association or by the officers or directors of the Association only to the minimum extent permitted by law or applicable government regulations.

d. Fidelity Bond. The fidelity bond shall cover all directors, officers and employees of the Association and the Association's managing agent, if any, who handle Association funds. The bond shall name the Association as obligee and be

in an amount not less than a sum equal to three (3) months' aggregate assessments on all Units, plus the amount of reserves and other funds on hand. It shall provide that the bond may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 30 days' prior written notice to the Association (10 days for non-payment of premium) and to all institutional first mortgagees of Units whose names appear on the records of the Association.

The Board of Directors shall, at the request of any Unit Owner, Unit mortgagee, or prospective Unit Owner or Unit mortgagee, increase the amount of such bond to meet the reasonable requirements of any existing or proposed holder or insurer of any mortgage made or to be made on any Lot.

e. **Workers' Compensation.** To the extent deemed reasonable and necessary by the Board of Directors, workers' compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other person performing work on behalf of the Association.

f. **Other Insurance.** The Board of Directors may also obtain such other insurance, as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage and hired and non-owned vehicle coverage.

g. **No Liability for Failure to Obtain Above Coverages.** The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost.

h. **Deductible.** The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense, provided however that each affected Owner shall be responsible for the deductible that applies to that damage occurring to the interior of their Unit, and the Board of Directors of the Association shall assess any deductible amount to a Unit Owner(s) where the deductible amount relates to a casualty to a Unit(s). The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessment under Article V of this Declaration.

**Section 8.02 Restoration or Reconstruction After Fire or Other Casualty.** In the event of damage to or destruction of any Unit or Units, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall notify all mortgagees of such Unit or Units as indicated on the records of the Association and shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors, shall disburse the proceeds of all insurance policies

to the contractors engaged in such repair and restoration in appropriate progress payments; provided, however, that if three-fourths (3/4) or more of the Units in a building are destroyed or substantially damaged and the Owners of 75 % or more of all Units and of all Units in the building decide within 90 days after such damage or destruction not to proceed with repair or restoration, the net proceeds of insurance policies, if any, shall be divided among the Owners in proportion to the damage, as determined by the insurer, to their insured property in relation to the total damage (including demolition) to all the insured property, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of such Owner's share of such funds all liens on such Owner's Lot.

In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a special assessment to make up the deficiency against the Unit Owners of the damaged property, which special assessment shall be levied in proportion to the damage, as determined by the insurer, to their insured property in relation to the total damage to all the insured property.

In the event of damage to or destruction of any Unit or other improvements on the Property as a result of fire or other casualty covered by insurance obtained by or through the Association, the deductible amount of any insurance proceeds shall apply to each occurrence, not to each item of damage, and shall be funded as follows:

1. If the property is damaged from a cause which emanates from improvements which the Association has the responsibility to maintain, the Association shall be responsible for the deductible amount, except that, if the cause of such damage is the result of gross negligence or the wantonly malicious act of any Owner (or of a member of such Owner's family or of a tenant of such Owner or of a guest or invitee of such Owner or of a member of such Owner's family) the Owner shall be responsible for such deductible amount.

2. If the property is damaged from a cause which emanates from or within a Unit (other than from a utility line or conduit which passes through the Unit and which services two (2) or more Units) or from any utility line or conduit which services only such Unit, whether located within or without the Unit, the Owner or Owners of such Unit shall be responsible for the deductible amount.

The Association may, at its option, pay the deductible amounts for which an individual Owner is responsible, and the amounts so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

Section 8.03 **Unit Owners Insurance.** Each Unit Owner, at such Owner's expense, shall obtain insurance, (HO-6 or equivalent form) for such Owner's benefit, including (1) All perils coverage, more commonly referred to as "all risk coverage" so as to cover property which is the Unit Owner's responsibility under this Declaration agreement, (2) coverage for such Owner's personal liability with such Owner's Unit and on such Owner's Lot, (3) Loss assessment coverage, provided however that (i) such policies contain waivers of subrogation, if available, and (ii) the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

Section 8.04 **Right of Mortgagees to Pay and be Reimbursed for Insurance.** In the event the Association fails to obtain or maintain fire, casualty, and liability policy for Association Property as required under this Article VIII, such insurance may be obtained by one or more mortgagees of Units, singly or jointly. Such mortgagee or mortgagees shall be owed immediate reimbursement from the Association for any amount expended for such insurance.

## ARTICLE IX

### GENERAL COVENANTS AND RESTRICTIONS

Section 9.01 **Animals Birds and Insects.** Except for (i) one dog and/or one cat, housed by Unit Owners only (not tenants, guests etc.), (ii) fish, or (iii) birds kept in a cage, no animals, birds or insects shall be kept or maintained on any Lot or other portion of the Property except with the consent of the Board of Directors of the Association which may, from time to time, (i) impose reasonable rules and regulations setting forth the type and number of animals, birds and insects and (ii) prohibit certain types of animals, birds or insects entirely. The Board Of Directors of the Association shall have the right to require any Unit Owner (or any tenant of any Owner, or any family member or guest of any Owner or tenant) to dispose of any animal, bird or insect, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal, bird or insect is creating a nuisance because, i.e., the Unit Owner does not clean up after the animal, the animal is too noisy, or the animal is not properly controlled.

Section 9.02 **Residential Use Only.** Except as provided in Section 9.03 below, the Property shall be used only for residential purposes and purposes incidental and accessory thereto.

Section 9.03 **No Commercial and Professional Activity on Property.** No wholesale or retail business, including any salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of the Property without the consent of the Board of Directors, except the conducting of business by telephone or electronically. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.

**Section 9.04 No Oversized Commercial Recreational or Unlicensed Vehicles Campers Boats or Trailers.** Unless used in connection with the construction or maintenance of the Property, or unless garaged or otherwise consented to by the Board of Directors of the Association, the following shall not be permitted on the Property:

- a. oversized vehicles (vehicles which cannot be garaged on the property);
- b. commercial vehicles (including but not limited to vans, trucks, or automobiles if they have visible equipment);
- c. recreational vehicles;
- d. unlicensed motor vehicles of any type;
- e. campers, boats, or trailers;
- f. tow trucks;
- g. taxicabs;
- h. any vehicle with more than four (4) wheels or exceeding 2.5 tons in gross weight or equipped with racks for the purpose of carrying glass, ladders, or any type of equipment.

**Section 9.05 Leasing Prohibited.** Effective 30 days after this Second Amended Supplemental Declaration is recorded, no leasing of Units will be allowed, except by current owners of record at that date. Said leasing prohibition will become effective against current Owners once their Unit is transferred to a new Owner. After the transfer of ownership of all units, the unit must be owner occupied.

**Section 9.06 Lease of Entire Unit Only.** If allowed (see Section 9.05) above), an Owner shall not lease any portion of a Unit (other than the entire Unit). A lease addendum, to be provided by the Association, must be executed by the tenant, and submitted to the Board along with a signed lease no later than thirty (30) days prior to the date of occupancy. Failure to submit a lease and/or lease addendum may result in termination of the Unit Owner's right to lease the property.

**Section 9.07 Initial Lease Term of Residential Unit.** If allowed (see Section 9.05 above):

- a. lease of a Unit shall be for an initial term of not less than one (1) year.
- b. units may only be leased if unit owner is in good standing.

c. three (3) violation notices within a twelve (12) month period relinquishes the right to lease.

Section 9.08 No AIRBNB. No AIRBNB or similar occupancy is allowed.

Section 9.09 No Operation of Snowmobiles Motorcycles All Terrain Vehicles or Similar Motor Vehicles. The operation of snowmobiles, motorcycles, all terrain vehicles, or similar vehicles is prohibited within the Property unless authorized by the Association's Board of Directors.

## ARTICLE X

### ENFORCEMENT, AMENDMENT AND DURATION OF SECOND AMENDED SUPPLEMENTAL DECLARATION

Section 10.01 Second Amended Supplemental Declaration Runs with The Land. Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to the Second Amended Supplemental Declaration) covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Second Amended Supplemental Declaration including personal responsibility for the payment of all charges that may become liens against his, her or its property and which become due while he, she or it is the Owner thereof, and also covenants to incorporate this Second Amended Supplemental Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 10.02 Enforceability.

a. Actions at Law or Suits in Equity. The provisions of the Second Amended Supplemental Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of and be enforceable by the Association (being hereby demand the agent for all of the Owners), and by any member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Second Amended Supplemental Declaration, any beneficiary hereof shall be entitled to relief by way of injunction, or specific performances, as well as any other relief available at law or in equity, to enforce the provisions hereof.

b. Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation of this Supplemental Declaration or of the By-Laws or of the rules and regulations of the Association or any committee of the Association, and after affording



the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. The penalty/fine will become final unless a Hearing is requested within 15 business days from the mailing date of the notice. Monetary penalties imposed against a Unit Owner or Unit occupant shall be deemed a Special Assessment against the Lot of such Owner or on which the Unit occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Unit Owner, and shall be collectible in the same manner as Assessments under Article V of this Second Amended Supplemental Declaration.

Section 10.03 No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior or subsequent thereto. No liability shall attach to the Association (or any officer, director, employee, Member, agent, committee, or committee member) or to any other person or organization for failure to enforce the provisions of this Second Amended Supplemental Declaration.

Section 10.04 Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Second Amended Supplemental Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (1) the Lot Owner, or (2) any family member, tenant, guest or invitees of the Lot Owner, or (3) a family member or guest or invitee of the tenant of the Lot Owner, or (4) a guest or invitee of (i) any member of such Lot Owner's family or (ii) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot owned by such Owner.

Section 10.05 Inspection and Entry Rules. Any agent of the Association may at any reasonable time or times, upon not less than 24 hours notice to the Unit Owner, enter upon the Lot of such Owner to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with this Second Amended Supplemental Declaration, or with rules and regulations issued pursuant hereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if the Board of Directors determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location, the height to which, or the manner in which it has been permitted to grow, is unsightly, detrimental or potentially detrimental to persons or property or obscures the view of street traffic or is otherwise in violation of this Second Amended Supplemental Declaration, the Association shall notify the Owner of the Lot or other portion of the Property who shall

be obliged to remedy the violation. If the Owner fails to remedy the violation within 30 days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

Section 10.06 Notification to Association of Mortgagees and Default Notices to be Sent to Mortgagees. The Association shall be notified by each Lot Owner or such Lot Owner's mortgagee of the name and address of the mortgagee of any mortgage on such Owner's Lot. Upon receipt of such notice, the Association may thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation, by such Owner, of any provision of this Second Amended Supplemental Declaration.

Section 10.07 Amending Second Amended Supplemental Declaration. Except as otherwise specifically provided for in this Second Amended Supplemental Declaration, the Board of Directors on its own initiative, or pursuant to a written petition signed by Owners of not less than 25 percent of the Units who are in good standing, owned by persons, may propose an amendment to this Second Amended Supplemental Declaration.

The Board of Directors shall hold a Hearing in accordance with Section 4.09 herein for the purpose of considering such proposed amendment. Notice shall be given as required by Section 4.09.

The date or initial date for the canvass of the vote on the proposed amendment shall not be less than 30 nor more than 45 days after the Hearing. Notice of such vote, containing the date, time and place of the canvass thereof and a copy of the proposed amendment, with such changes as the Board of Directors shall have made as a result of the written and oral comments received at the Hearing, and a form of ballot shall be mailed or delivered by the Board of Directors to all Owners not less than 14 days prior to the date or initial date set for the canvass thereof.

The affirmative vote of owners eligible to vote, is 67% or more of the total number of units of owners in good standing, shall be required for approval of a proposed amendment.

In addition to the approval of the Unit Owners as provided for herein, no amendment which substantially affects the interest of any lending institution shall be effective if lending institutions which together are first mortgagees on 51 % or more of the Units advise the Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the

Association at least 30 days prior to the date or initial date set for voting on the proposed amendment.

No amendment shall terminate, extinguish or adversely modify any easement granted in this Second Amended Supplemental Declaration, which benefits Lots or Units except with respect to those Lots or Units whose owners specifically consent in writing to such termination, extinguishment or modification.

Section 10.08 Owner Responsible for Tenants. Any lease of a Unit shall provide and specify in writing within the lease specific reference to the "Second Amended Supplemental Declaration" and that the tenant shall comply in all respects with the terms of the Second Amended Supplemental Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant is in violation of such Second Amended Supplemental Declaration, By-Laws or rules and regulations, the Board of Directors shall so notify the Owner of the Unit which such tenant occupies in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings are not commenced against the tenant within 14 days after the Owner has received notice of such violation, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to Section 10.02 of this Second Amended Supplemental Declaration.

Section 10.09 When Amendment or Termination Becomes Effective. Any amendment or termination of this Second Amended Supplemental Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Clerk of the County of Erie. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 10.10 Duration. Except as otherwise provided herein, this Declaration shall continue with full force and effect perpetually unless terminated by affirmative vote of not less than 80% of the total number of Unit Owners after a Hearing is held in accordance with Section 4.09 of this Second Amended Supplemental Declaration.

The date or initial date for the canvass of the vote on any proposed termination shall be not less than 30 nor more than 45 days after the Hearing. Notice of such vote, containing the date, time and place of the canvass thereof, and a form of ballot, shall be mailed or delivered to all Lot Owners not less than 14 days prior to the date of or initial date set for the canvass thereof.

Section 10.11 Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Second Amended Supplemental Declaration and, in the absence of an adjudication by a court of competent jurisdiction to

the contrary, its construction or interpretation shall be final and binding as to all persons or property benefitted or bound by the provisions hereof.

Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation, and enforcement of the provisions of this Second Amended Supplemental Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interests of the Owners and residents of the Property for purpose of preserving and maintaining the Property to the end that the Property shall be preserved and maintained as a high quality community.

In granting any permit, authorization, or approval, as herein provided, the Association may impose any conditions or limitations thereon as it shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph hereof.

Section 10.12 Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 10.13 Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Second Amended Supplemental Declaration, and the same may be amended only in the manner provided herein.

Section 10.14 Invalidity of Agreement or Second Amended Supplemental Declaration. The determination by any court that any provision hereof is unenforceable, invalid, or void shall not affect the enforceability or validity of any other provision hereof.

## ARTICLE XI

### GENERAL

Section 11.01 Headings and Captions. The headings and captions contained in this Second Amended Supplemental Declaration are for convenience only and shall not affect the meaning or interpretation of the content thereof.

Section 11.02 Notice. Any notice required to be sent to any Owner or mortgagee under the provisions of this Second Amended Supplemental Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person or entity appearing as the Owner or mortgagee on the records of the

Association at the time of such mailing, or by e-mail provided that the Unit Owner agrees to receiving such e-mail made in lieu of postal mailings.

Section 11.03 Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Second Amended Supplemental Declaration to any successor not-for-profit corporation or trust and, upon such assignment, the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Second Amended Supplemental Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party, and all references herein to the Board of Directors shall refer to the Board of Directors (or Trustees) of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Lot Owner may petition the court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibility of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 11.04 Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners' or residents' association or similar entity.

Pursuant to Section 10.07 of the Supplemental Declaration - Charlesgate Village, there is attached to this Second Amended Supplemental Declaration a certification of the Board of Directors of the Association certifying that the required consents of 67% or more of the Lot Owners has been received and filed with the Board of Directors.

CHARLESGATE VILLAGE ASSOCIATION, INC.

By: Suzanne Dewey

STATE OF NEW YORK    )  
  ) SS:  
COUNTY OF ERIE        )

On the 14<sup>th</sup> day of September in the year 2020 before me the undersigned, personally appeared Suzanne Dewey personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Debra A. Kucia  
Notary Public

**Debra A. Kucia**  
**Notary Public, State of New York**  
**Qualified in Erie County**  
**My Commission Expires 05/07/**23



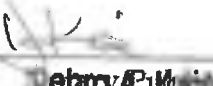
STATE OF NEW YORK )  
 )SS:  
COUNTY OF ERIE )

On the 14<sup>th</sup> day of September in the year 2020 before me the undersigned, personally appeared Suzanne Denise personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Debra A. Kucia  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 05/07/23


STATE OF NEW YORK )  
 )SS:  
COUNTY OF ERIE )

On the 14<sup>th</sup> day of September in the year 2020 before me the undersigned, personally appeared Edward Drozen personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Debra A. Kucia  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 05/07/23

STATE OF NEW YORK )  
 )SS:  
COUNTY OF ERIE )

On the 14<sup>th</sup> day of September in the year 2020 before me the undersigned, personally appeared Deborah Fox-Hahn personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public  
Debra A. Kucia  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 05/07/23




STATE OF NEW YORK )  
 )SS:  
COUNTY OF ERIE )

On the 14<sup>th</sup> day of September in the year 2020 before me the undersigned, personally appeared Betsy Grainer personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
**Debra A. Kucia**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 05/07/23

STATE OF NEW YORK )  
 )SS:  
COUNTY OF ERIE )

On the 14<sup>th</sup> day of September in the year 2020 before me the undersigned, personally appeared Colleen McNally personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
**Debra A. Kucia**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 05/07/23

STATE OF NEW YORK )  
 )SS:  
COUNTY OF ERIE )

On the 14<sup>th</sup> day of September in the year 2020 before me the undersigned, personally appeared Nicholas Pordan personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

**Debra A. Kucia**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 05/07/23

STATE OF NEW YORK )  
 )SS:  
COUNTY OF ERIE )

On the 14<sup>th</sup> day of September in the year 2020 before me the undersigned, personally appeared Robert V. Rose personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

**Debra A. Kucia**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 05/07/23